

## § 1506.8

upon request, except to the extent that disclosure is prohibited by law.

(Approved by the Office of Management and Budget under control number 3205-0001)

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### **§ 1506.8 General standards for independent contractor activities.**

(a) In connection with the performance of any contract and during the term of such contract, a contractor, its key employees, subcontractors, and its related entities, shall not:

(1) Act for the RTC in any matter in which either the contractor, its key employees, subcontractors, or a related entity, has a conflict of interest unless the Contractors' Conflicts Committee or the Outside Counsels' Committee has determined that such participation is appropriate;

(2) Accept or solicit for itself or others favors, gifts, or other items of monetary value from any individual or entity whom the contractor, its key employee, or subcontractor, knows is seeking official action from the RTC in connection with the contract or has interests which may be substantially affected by the performance or non-performance of duties to the RTC;

(3) Improperly use or allow the improper use of RTC property, or property over which the contractor, its key employee, subcontractor, or related entity, has supervision or control by reason of the contract, for the personal benefit of any individual or entity other than the RTC; and

(4) Make any unauthorized promise or commitment on behalf of the RTC.

(b) Any individual who acts for or on behalf of the RTC pursuant to a contract or any other agreement shall be deemed a public official for purposes of 18 U.S.C. 201. That statute generally prohibits the direct or indirect acceptance by a public official of anything of value in return for being influenced in, or because of, an official act. Violators are subject to criminal penalties.

(c) Any individual or entity providing information or certification to the RTC

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is subject to 18 U.S.C. 1001.<sup>1</sup> Upon receipt of information indicating that any individual or entity has violated any provision of title 18 of the U.S. Code or other provision of criminal law, the RTC shall refer such information to the Department of Justice.

### **§ 1506.9 Limitations on concurrent and subsequent activities.**

(a) *Avoiding undue advantage.* The Corporation has determined that contractors performing services for the RTC may have an undue advantage over competitors if they seek additional contracts with the RTC or with third parties which relate to work being performed or already performed for the RTC. To prevent such advantage, restrictions, dependent on the scope of contractual responsibilities, must be imposed on the concurrent and subsequent activities of contractors. Accordingly, the following restrictions shall apply unless waived pursuant to paragraph (b) of this section.

(1) A contractor engaged by the RTC to develop a plan of action concerning a specific insured institution cannot enter into any subsequent contract with the RTC to implement its recommendations or assist others in regard to such contract. This restriction does not bar the RTC, at its discretion, from determining to simultaneously engage a single contractor to both develop and implement a plan of action;

(2) A contractor engaged by the RTC to manage, lease, value, or establish a sales price for an asset or group of assets cannot enter into any subsequent contract with the RTC to purchase that asset or assets or assist someone other than the RTC or FDIC seeking to purchase that asset or those assets from the RTC; and

(3) A contractor cannot act for the RTC in the same particular matter in which it or a related entity has a business or financial interest.

(4) Additional limitations may be imposed on a contractor's concurrent or subsequent activities on a case-by-case basis in situations in which the RTC concludes that a contractor may gain

<sup>1</sup>Section 1001 of title 18 generally prohibits the making of any false or fraudulent statement to a federal officer.

an unfair competitive advantage or such concurrent or subsequent activity would raise a significant appearance of impropriety. These additional limitations, when imposed, will be disclosed to the contractor prior to entering into the contract.

(b) *Waivers.* The Contractors' Conflicts Committee and the Outside Counsels' Conflicts Committee may grant waivers from the limitations imposed by paragraph (a) of this section. Circumstances which may be sufficient to warrant the granting of a waiver are:

(1) Evidence of an established effective screening mechanism which would eliminate the likelihood of the contractor obtaining any undue advantage; or

(2) An open or competitive bidding procedure in which the contractor's work for the RTC would provide no competitive advantage.

#### **§ 1506.10 Communications with RTC employees.**

(a) *Prohibitions.* During the course of any contractor selection process by the RTC (including any contractor selection process using procedures other than competitive procedures), a competing contractor, its related entities, and employees, representatives, agents, or consultants of the competing contractor or its related entities shall not:

(1) Directly or indirectly make any offer or promise of future employment or business opportunity to, or engage directly or indirectly in any discussion of future employment or business opportunity with, any RTC employee with personal or direct responsibility for that procurement, and competing contractors who wish to discuss employment opportunities with an employee should inquire prior to engaging in such discussions whether the employee has personal or direct responsibility for the contractor selection process in which the contractor will be or is competing;<sup>2</sup>

<sup>2</sup>Employees who have no personal or direct responsibility for the selection of a contractor may engage in employment discussions if they disqualify themselves from subsequent participation in any matter in which the contractor has an interest. See 18 U.S.C. 208(a) and 12 CFR 1605.15(b)

(2) Offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any RTC employee, except as permitted by rules of the Corporation;<sup>3</sup> or

(3) Solicit or obtain, directly or indirectly, from any RTC employee, prior to the award of the contract, any proprietary or source selection information regarding such contractor selection process.

(b) *Competing contractor.* For purposes of this section, "competing contractor" with respect to any contractor selection process (including a process using procedures other than competitive procedures) means any entity that is, or is reasonably likely to become, a competitor for or recipient of a contract or subcontract under such contractor selection process, and includes any other person acting on behalf of such entity.

(c) *Certification.* The RTC shall not award a contract or agree to a modification of a contract unless the officer or employee of the competing contractor responsible for the bid, offer, or proposal submits with it a written certification that:

(1) The officer or employee is aware of the prohibitions of paragraph (a) of this section and, to the best of that officer's or employee's knowledge and belief, he or she has no information concerning a violation or possible violation of paragraph (a) of this section; and

(2) Each officer, employee, agent, representative, and consultant of such competing contractor who participated personally and substantially in the preparation and submission of such bid, offer, proposal, or modification of such contract has certified to the responsible officer or employee that he or she:

(i) Is familiar with and will comply with the requirements of paragraph (a) of this section; and

(ii) Has no information of any violations or possible violations of paragraph (a) of this section and will report immediately to the officer or employee

<sup>3</sup>Employees of the RTC are prohibited from soliciting or accepting anything of value from anyone having business with the RTC or the FDIC. See 12 CFR 1605.8.